

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY – REMEDIAL ACTION

##### PREAMBLE

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| <p><b><u>1. Sections Affected</u></b></p> <p>Article 6<br/>R18-7-601<br/>R18-7-602<br/>R18-7-603<br/>R18-7-604<br/>R18-7-605</p> | <p><b><u>Rulemaking Action</u></b></p> <p>New Article<br/>New Section<br/>New Section<br/>New Section<br/>New Section<br/>New Section</p> |
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- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statutes: A.R.S. §§ 41-1003 and 49-104
- Implementing statutes: Laws 2000, Chapter 225, § 13; A.R.S. §§ 49-152(K) and 49-158(G)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 6 A.A.R. 4048, October 20, 2000
- Notice of Rulemaking Docket Opening: 8 A.A.R. 1738, April 5, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | James P. Lawless                        |
| Address:   | 1110 W. Washington<br>Phoenix, AZ 85007 |
| Telephone: | (602) 771-4562                          |
| Fax:       | (602) 771-2302                          |
| TTD:       | (602) 771-4829                          |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- A. Authorization**
- This is an interim rulemaking authorized in 2000 Ariz. Sessions Laws Ch. 225, § 13. The session law requires the Department to adopt rules establishing the fees prescribed in A.R.S. §§ 49-152(H) and 49-158(E). The session law exempts this interim rulemaking from the rulemaking provisions at A.R.S. Title 41, Chapter 6, Article 3, but requires the Department to publish the interim rules in the Arizona Administrative Register, provide for reasonable notice and hold at least one public hearing on the proposed interim rules. These interim rules become effective no earlier than the 30th day after the last public hearing.
- Laws 2000, Chapter 225, § 13 requires the Department to file a notice of rulemaking docket opening with the Secretary of State for the making of permanent rules within 90 days after filing these interim rules. Within 30 days of filing the notice of rulemaking docket opening, the Department is required to file a notice of proposed rulemaking for the permanent rules. The interim rules expire and are automatically repealed on the date that these permanent rules become effective.

## **B. Purpose of This Proposed Rule**

This rule will establish a fee to be paid to the Department before a property owner records a Declaration of Environmental Use Restriction (DEUR) under A.R.S. §§ 49-152 or 49-158 for a property that is subject to an institutional control. Although sections 49-152 and 49-158 call for recording a DEUR whenever an owner elects to use either an institutional control or an engineering control to reduce the potential for exposure to contaminants on the property, this rule would establish the fee only in those instances when an owner elects to use an institutional control for such purpose. The fee for engineering control properties will be proposed at a later time.

The fees paid under both rules will serve as the major source of funding for the Institutional and Engineering Control Fund established under A.R.S. § 49-159. Monies in the Institutional and Engineering Control Fund will be used by the Department for reasonable and necessary costs of implementing the DEUR provisions of A.R.S. §§ 49-152 and 49-158; for reasonable and necessary costs of administering the Fund; and for the repair or restoration of engineering controls, if required, under A.R.S. §§ 49-152(I) or 49-158(F).

## **C. Background of the Proposed Rule**

### Soil Remediation and the VEMUR

In Arizona, property owners may remediate contaminated soil to either residential or non-residential standards established under the Soil Remediation Standards rules in 18 A.A.C. 7, Article 2. Soil that meets either the residential or the non-residential standard is “clean enough” for the purpose of meeting the remediation requirements of any program administered by the Department.

Remediation to a non-residential standard is an option for property owners remediating soil on property that is either industrial or commercial. A property owner may decide that remediation to residential levels or to “background” (naturally occurring concentrations) levels is unnecessarily expensive in the context of a property which will be used as a warehouse, a factory or for some comparable use. The option to remediate contaminated soil to an appropriate non-residential standard allows for remediation projects that may be completed more quickly and more affordably.

Remediation of a property to non-residential soil levels, however, is protective of human health and the environment only if the property is, in fact, not used for residential purposes for so long as the conditions described in the restriction remain. To ensure that the use of these properties is appropriate, A.R.S. Title 49, Chapter 1, Article 4 and the Soil Remediation Standards rules require that property owners who remediate to the non-residential soil standards execute an agreement that legally restricts the use of their property to non-residential uses. The agreement is recorded in the County Recorder’s Office in the county where the property is located. The recording of the agreement provides notice to interested parties of the restriction on the use of the property.

Before July 18, 2000, the agreement a property owner signed and recorded was called a Voluntary Environmental Mitigation Use Restriction (VEMUR). The VEMUR was a relatively simple promise, by the property owner, to limit the property to non-residential uses. The VEMUR is a notice to deed recorded in the county(ies) where the property is located.

### The DEUR

In 2000, the Legislature enacted Senate Bill 1454, amending A.R.S. Title 49, Chapter 1, Article 4 to eliminate the VEMUR and to replace it with a DEUR. Senate Bill 1454 became effective as Laws 2000, Chapter 225 on July 18, 2000. After July 18, 2000, property owners remediating contamination, including remediating soil to non-residential levels, execute and record a DEUR.

The DEUR is more comprehensive than the VEMUR. Under the amended A.R.S. § 49-152, if a property owner remediates soil to non-residential standards or reduces the potential for exposure to contaminants on the property through the use of institutional controls or engineering controls, the owner must record a DEUR. Under the new A.R.S. § 49-158, if a remedial action, remediation, or corrective action performed under A.R.S. Title 49, or a response action performed under CERCLA, includes an institutional control or an engineering control and the remedial action, remediation, corrective action, or response action is not subject to section 49-152, the owner of the property on which the institutional control or engineering control is located must record a DEUR.

A.R.S. § 49-151 defines an engineering control as a “remediation method such as a barrier or cap that is used to prevent or minimize exposure to contaminants and includes technologies that reduce the mobility or migration of contaminants.” Examples of barriers that prevent exposure to contamination may include fences and concrete slabs that block access to the contamination. Caps, liners, berms, leachate collection systems, pump and treat technologies and methane gas collection systems are examples of technologies that may reduce the mobility or migration of contaminants. As stated earlier, fee rules governing engineering controls will be developed in the future.

An institutional control is defined in A.R.S. § 49-151 as “a legal or administrative tool or action taken to reduce the potential for exposure to contaminants.” Because the execution and recording of a DEUR is a legal or administrative tool or action taken to reduce the potential for exposure to contaminants, the DEUR itself is an institutional control. In fact, the most common example of the use of an institutional control is expected to be the remediation of contaminated soil on a property to non-residential levels accompanied by the execution and recording of a DEUR. Other land

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use restrictions or other legal or administrative actions, however, may also function to limit exposure potential and serve as institutional controls.

Unlike the VEMUR, use of a DEUR is not limited to the remediation of properties containing contaminated soil. Properties that are sources of contamination of groundwater or surface water and properties that contain contaminated non-soil materials, also may be cleaned up under one of the Department's clean-up programs or under CERCLA. If the property owner uses an engineering or institutional control in the process of remediating these properties, the owner must execute and record a DEUR.

A DEUR is a covenant that runs with and burdens the property for the benefit of the Department and the state. The DEUR binds future owners of the property to the covenant made by the current owner. The DEUR is recorded in each county in which the property lies and, once recorded, becomes an encumbrance on the legal title to the property. A recorded DEUR ensures that future owners, as well as current owners, have notice of and responsibility for the remediation level or control mechanism that is described in the DEUR. The terms of the DEUR remain in effect until it is released by the Department under procedures established in A.R.S. §§ 49-152 and 49-158.

New Services Provided by the Department

The DEUR is a legally binding restriction on real property, and a major component of a remediation process that may include multiple institutional and engineering controls. Replacement of the relatively simple VEMUR with the more sophisticated and complex DEUR, will result in a new range of responsibilities assumed by the Department.

A DEUR will be submitted on a form to be provided by the Department. The Department will assist in the preparation of a DEUR and will carefully review each DEUR prior to its execution and recording. The Department will verify that descriptions of the property and of the area in which the institutional and/or engineering controls will be maintained, are complete and accurate. The Department will verify that the DEUR accurately describes the nature of the contaminants that remain on the site; the institutional and engineering controls that will address the contamination; and the requirements for maintenance of these controls.

The property owner is required to monitor and maintain the institutional and engineering controls and submit an annual report to the Department describing the status of the controls. The Department will also monitor the maintenance of the institutional and/or engineering control described in the DEUR during the lifetime of the DEUR. The Department will review annual reports from the owner and may inspect properties to verify that controls are being adequately maintained. If engineering controls require repair or restoration, the Department is authorized to take appropriate legal action to compel the owner to repair or restore the engineering control and seek recovery of its costs from the owner of the property. If the costs of repair or restoration are not recoverable from the property owner, the Department will recover these costs from the Institutional and Engineering Control Fund.

A property owner may request the Department to release a DEUR. The Department will review the request and may inspect the property, including current levels of contamination on the property, and, if appropriate remediation levels have been achieved pursuant to A.R.S. §§ 49-152(C) or 49-158(I), will draft, execute and record the release.

Laws 2000, Chapter 225 also expanded the Department's role in notifying the public regarding sites that are being remediated under the Department's various programs. Under Laws 2000, Chapter 225, the Department provides copies of DEURs to appropriate local zoning jurisdictions. Further, the statute, in authorizing the DEUR fee, provides for partial funding for the development and maintenance of the Department's repository of sites that are subject to remediation under any of the Department's programs, including all sites where a DEUR has been recorded.

Today's Rulemaking

Laws 2000, Chapter 225 requires a property owner, before recording a DEUR, to pay a fee established by the Department in rule. The fee will be used to pay for reasonable and necessary costs incurred by the Department in implementing the new statutory requirements.

Today's rulemaking represents the Department's first step in establishing this fee. This proposed rule will only apply to owners of institutional control properties. Institutional control properties are properties that the owner remediates to non-residential remediation standards or otherwise reduces the potential for exposure to contaminants on the property through the use of an institutional control, but not an engineering control. We expect the majority of DEUR properties will be institutional control properties, including properties that are restricted under the terms of the DEUR to non-residential uses. Institutional control properties are relatively simple to administer and do not carry a risk that the Department will incur significant costs associated with the repair or restoration of engineering controls at the site. This limited rulemaking will implement the fee provisions of Laws 2000, Chapter 225 in regard to properties subject to an institutional control.

Future Rulemaking

A future interim rulemaking will propose rules that will establish fees to be paid by property owners who elect to use engineering controls or a combination of engineering controls and institutional controls in the remediation of their properties. The development of a fee that is sufficient to allow the Department to provide the expanded range of services established under Laws 200, Chapter 225 in regard to engineering control properties requires the resolution of several complex issues. Unlike institutional control properties, engineering control properties vary significantly from

property to property. Engineering controls may be simple or complex. Engineering control properties may be large or small. A property may require any number of engineering controls. The expense involved in reviewing a proposed engineering control and subsequent annual reports, and assessing the condition of controls at a property, will vary widely depending on the nature of the property, the contamination, and the engineering control.

Particularly challenging is the process of developing a single fee, to be paid by the property owner at the time a DEUR is recorded, that will provide the Department a mechanism guaranteeing that costs incurred by the Department, in assuming maintenance, repair, and restoration of an engineering control, will be reimbursed. The Department may incur repair and restoration costs if property owners fail to perform their responsibilities regarding engineering controls on their properties. The costs resulting from any such failure may be low or extremely high. Failures may be frequent, occasional, or, for some properties, may never occur. Given the tentative nature of these costs, the development of a single, prospective fee that will be adequate to meet the Department's responsibilities will require further study by the Department. The Department and a committee of concerned stakeholders are currently exploring possible mechanisms that will provide for recovery of these costs on an affordable basis, including potential financial assurance mechanisms. The interim rule that the Department will propose for engineering control properties will include provisions to cover the potential costs of repair and restoration of engineering controls. The Department welcomes stakeholder comments on the question of the best means to cover these costs.

#### **D. The Rule Development Process**

Development of a fee rule that applies to owners of institutional control properties requires the Department to:

1. Identify the activities that would be necessary to provide the services authorized under Laws 2000, Chapter 225;
2. Develop estimates of the number of hours that would be required to perform each activity at each institutional control property; and
3. Develop a "dollar-multiplier" for use in converting the estimates of activity hours into dollar amounts for the purpose of establishing a fee.

#### DEUR-Related Activities

Under Laws 2000, Chapter 225, the activities the Department will be performing in regard to institutional control properties include:

1. Reviewing the legal description of the property that will be subject to the DEUR;
2. Reviewing the description of the area where an institutional control will be maintained;
3. Reviewing the contaminants on the property;
4. Reviewing the proposed institutional control;
5. Reviewing and approving the terms of the proposed DEUR;
6. Providing a copy of the DEUR to the local zoning jurisdiction;
7. Reviewing annual reports;
8. Performing periodic property inspections to verify maintenance of the institutional control;
9. Administering the repository of properties being remediated under the Department's programs;
10. Reviewing and responding to requests for releases of the DEUR;
11. Recording DEUR release notices; and
12. Coordinating and overseeing all DEUR activities.

#### Projection of Hours Required to Perform the DEUR Related Activities

The Department, with the input of the professionals in each program who would be implementing the DEUR provisions, projected the number of hours that would be required to perform DEUR related activities. The six Department programs that will be involved in the implementation of the DEUR provisions established under Laws 2000, Chapter 225 are the Aquifer Protection Permit Program; the Hazardous Waste Program; the Solid Waste Program; the Superfund Program; the Underground Storage Tank Program (UST); and the Voluntary Remediation Program.

Based on consultation with remediation program professionals, the Department estimates that the following activities will require approximately the following average number of hours in relation to each recorded DEUR:

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Activity	Estimated hours
Legal Description Review	2 hrs.
Review Control Area	1 hr.
Review Contaminants	2 hrs.
Review Institutional Controls	2 hrs.
Review and Approval of the Terms of the DEUR	8 hrs.
Copy to Zoning Jurisdiction	1 hr.
DEUR Release	10 hrs.
Record DEUR Release	4 hrs.
Review Reports	1 hr./yr.
Periodic Inspections	1 hr./yr. (UST) 3 hrs./yr. (other)
Centralized Costs, and Development and Maintenance of the Repository	See section E, below

**The Dollar Multiplier**

Finally, the Department sought the input of its program professionals, to utilize the programs' operating and cost experience in order to determine the "dollar multiplier" to be applied to the estimates of hours to arrive at the appropriate fees. The dollar multiplier is a number intended to serve as a reasonable projection of the cost of performing the activities required of the Department under Laws 2000, Chapter 225 expressed on a per hour basis. The overall DEUR fee is based on projections of the average number of hours to perform the various activities at institutional control properties, multiplied by the dollar multiplier.

The dollar multiplier was based on the following methodology:

1. The six relevant programs (Aquifer Protection; Hazardous Waste; Solid Waste; Superfund; Underground Storage Tank (UST); and Voluntary Remediation) were analyzed to determine the total number of billable staff positions filled as of March, 2000. Although the exact number of positions fluctuates slightly, it was necessary to use a position count from a representative single point in time during the base year in order to perform this analysis. Billable staff positions include project managers and other non-managerial technical staff that deal with property cleanups. Based on this analysis, the Department determined that, as of March, 2000, 130 filled billable positions were devoted to site cleanups in the six relevant programs.
2. Each billable staff position was multiplied by 62% (60% for the Voluntary Remediation Program) of 2080 to determine the total number of billable hours attributable to these billable staff positions per year. 62% of 2080 hours for 130 people (adjusted to 60% for Voluntary Remediation Program staff) equals 167,520 hours.
3. A fiscal year (FY) 2002 budget for the six relevant programs was estimated based on actual FY 2000 expenses incurred in relation to the above programs. The FY 2000 expenses were adjusted by a 10% pay increase for engineers, a 2% pay increase for all employees in FY 2001 and a 5% pay increase in FY 2002. Budget projections for the Voluntary Remediation Program were based on FY 2001-FY 2004. The FY 2002 budget is projected at \$18,007,366.
4. The FY 2002 estimated budget was divided by the projected total number of billable hours to arrive at an average cost per hour for site remediation activities. \$18,007,366 divided by 167,520 equals \$107.49.

To take account of inflation beyond FY 2002, the above amount is rounded up to \$110. Thus, the dollar multiplier used in this proposed rule is \$110.

**E. The Proposed Fee Rules for Institutional Control Properties**

The fee proposed in this rule is paid before a DEUR is recorded. The fee amount is based on the Department's projections of its costs of providing services under A.R.S. Title 49, Chapter 1, Article 4.

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Costs of One-time Activities

One-time activities the Department performs under A.R.S. Title 49, Chapter 1, Article 4 are defined in R18-7-601 as including “reviewing and/or approving legal descriptions, control areas, contaminants, institutional controls, and draft DEURs, and providing notices of DEURs to local zoning jurisdictions.” The proposed fee amount is 16 x the dollar multiplier of \$110, or **\$1760**, representing the Department’s projected costs of performing one-time activities in relation to the property.

Costs of Ongoing Activities

Ongoing activities the Department performs under A.R.S. Title 49, Chapter 1, Article 4 are defined in R18-7-601 as including “reviewing written reports, site inspections, or other verifications of the maintenance of institutional controls.” The proposed fee includes an amount representing the Department’s estimate of its costs of performing ongoing activities in relation to the property.

This amount will vary depending on whether the property is subject to corrective action for released petroleum under the UST program or is being remediated under one of the Department’s other programs. The Department projects that review of the annual report for an institutional control property will require an average of one hour. The Department projects that institutional control properties that are subject to corrective actions for released petroleum under the UST program will require an average of one hour of annual inspection time. The Department projects that other sites will require an average of three hours of annual inspection time.

The fee amount will also vary based on the Department’s projection of the number of years the property will require ongoing activities. The Department will project the number of years required on a case by case basis. Although nothing in Article 4 limits the potential duration of a DEUR, the number of years that the Department projects, for fee purposes, will not exceed 30 years.

Cost of Releasing the DEUR

Under A.R.S. §§ 49-152(C) and 49-158(I), the Department will review a request for release of a DEUR and, if release is appropriate, prepares and records a release of the DEUR in each county where the property is located. The fee amount includes a payment of 14 x the dollar multiplier of \$110, or **\$1540**, representing the Department’s projected costs of releasing the DEUR.

As an accommodation to property owners, the Department is proposing an option to the payment of this portion of the fee. Under R18-7-605, a property owner may agree to reimburse the Department, at the time that the property owner requests the release, for the Department’s reasonable and necessary costs of reviewing and acting upon the request for a release. This option allows property owners to pay for this service only if it is requested and also to pass the costs of obtaining a DEUR release to the party that owns the property at the time the DEUR is released. Given the potentially long life span of a DEUR, this option may be attractive to some property owners. Property owners should note, however, that those who elect to use this option acknowledge that the future amount of the release portion of the fee, may be greater than the current amount described in R18-7-604(C).

Development and Maintenance of the Repository

The fee includes a fixed payment of **\$1,500**. This represents the Department’s projected costs of the DEUR-related share of developing and maintaining the repository under A.R.S. § 49-152(D), allocated equally to each property owner recording a DEUR. The Department estimates its costs to be \$85,000 per year. This amount includes software acquisition and updates at approximately \$5,000 per year, salary and benefits for one full-time information technology position, and agency indirect costs.

The costs of collecting and maintaining the information required under the statute will not vary significantly from site to site. As a result, the size of the site, and the complexity of the institutional or engineering control were not factors the Department considered in projecting its costs in maintaining the repository.

The DEUR-related share of the repository cost is difficult to predict until the Department has more experience to verify what the number of DEURs per year will be. During the first year, 2001, only twelve DEURs were completed and recorded. However, the rate has begun to increase. In the proposed interim rule, the Department proposes a flat fee amount of \$1,500 assessed to each property owner at the time the DEUR is recorded, as payment toward the Department’s costs of developing and maintaining the repository. Although initially this appears to represent less than the DEUR-related share of repository costs, the Department believes this is a reasonable assessment to use. Under proposed R18-7-604, each property that becomes subject to a DEUR will be responsible for providing \$1,500 for this purpose.

Costs of Centralized Coordination Activities

The fee also includes a fixed payment of **\$1,333**. This represents the Department’s projected costs of coordinating and overseeing its DEUR-related functions created by the DEUR statute, allocated equally to each property owner recording a DEUR. In the course of beginning to implement the statutory DEUR provisions, the Department has confirmed that it is incurring such new costs associated with carrying out its responsibilities on behalf of all of its relevant programs. The Department has calculated that such activities require the equivalent of at least one-half of a position per

year, including salary, benefits and indirect costs, for a cost of \$40,000 per year. Although the Department's programs have projected that the total number of institutional control DEURs they administer will reach 45- 50 per year, that number has not been reached yet. The Department has concluded that it is appropriate in the interim rule to allocate its costs of DEUR centralized coordination activities on the basis of 30 institutional control DEURs per year. As with the repository costs, the Department has determined that its centralized coordination costs should be allocated equally among all DEURs. Using the assumption of 30 institutional control DEURs per year, the Department proposes this portion of the DEUR fee as **\$1,333**.

#### Section by Section Analysis

##### **R18-7-601. Definitions**

Terms with specific application to these rules are found in R18-7-601. These rules establish a fee to be paid by owners of institutional control properties. Fee calculations are based on the Department's projections of the costs of "one-time activities" and "ongoing activities" as defined in this Section, as well as on other costs, both projected and actual.

##### **R18-7-602. Applicability**

This Section provides that this rule applies only to institutional control properties. It also reiterates the basic requirement for when a DEUR must be recorded.

##### **R18-7-603. Fee**

R18-7-603 requires that property owners recording a DEUR pay the fee described in these rules. The Section also clarifies the Department's understanding that, in A.R.S. §§ 49-152(H) and 49-158(E), the phrase "when the declaration of environmental use restriction is recorded" is intended to impose a condition that must be satisfied before the property owner records the DEUR. The section requires the property owner to pay the fee before recording the DEUR.

##### **R18-7-604. Fee Calculation for Institutional Control Properties**

Although the DEUR fee is a single fee paid at the time that the DEUR is recorded, the fee reimburses the Department for the costs of services provided under A.R.S. Title 49, Chapter 1, in relation to institutional control properties. The fee amount is the sum of the following amounts:

- **\$1,760**, or 16 hours x \$110, representing the Department's projected costs of performing one-time activities.
- An amount representing the Department's projected costs of performing ongoing activities. This amount will vary depending on whether the property is subject to corrective action for released petroleum under the underground storage tank program or is being remediated under one of the Department's other programs. This amount will also vary based on the Department's projection of the number of years the property will require ongoing activities. Although nothing in Article 4 limits the potential duration of a DEUR, the maximum number of years for this projection, for fee purposes, will not exceed 30 years.
- **\$1,540**, or 14 hours x \$110, representing the Department's projected costs of releasing the DEUR.
- **\$1,500** per site, representing the allocation to the property of the Department's projected costs of administering the repository under A.R.S. § 49-152(D).
- **\$1,333** per site, representing the allocation to the property of the Department's projected costs of coordinating and overseeing its DEUR-related functions on behalf of all of its relevant programs.

##### **R18-7-605. Postponement of the Release Portion of the DEUR Fee**

Under R18-7-605, payment of the portion of the fee representing the Department's costs of releasing the DEUR is one of two options available to property owners. The owner may, instead, agree to reimburse the Department, at the time the owner requests the release of the DEUR, for its reasonable and necessary costs of releasing the DEUR. This agreement must take the form of a covenant, contained in the DEUR, that runs with the land, burdens the property, and inures to the benefit of the Department and the state.

- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

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- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable, because this rule will not diminish a previous grant of authority of a political subdivision of this state.
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
Not applicable. This interim rulemaking is exempt from the rulemaking provisions at A.R.S. Title 41, Chapter 6, Article 3.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact:**  
Not applicable
- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
- Date: September 25, 2002
- Time: 9:00 a.m.
- Location: Arizona Department of Environmental Quality  
1110 W. Washington, Suite 250  
Phoenix, AZ 85007
- Written comments will be accepted through September 27, 2002 at 5:00 p.m. Written comments should be addressed to James P. Lawless, Waste Programs Division, Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:**  
None
- 12. Incorporations by reference and their location in the rules:**  
None
- 13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

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**ARTICLE 6. DECLARATION OF ENVIRONMENTAL USE RESTRICTION FEE**

Sections

- R18-7-601. Definitions  
R18-7-602. Applicability  
R18-7-603. Fee  
R18-7-604. Fee Calculation for Institutional Control Properties  
R18-7-605. Postponement of the Release Portion of the DEUR Fee

**ARTICLE 6. DECLARATION OF ENVIRONMENTAL USE RESTRICTION FEE**

**R18-7-601. Definitions**

The following definitions shall apply in this Article, unless the context otherwise requires:

“Department” means the Arizona Department of Environmental Quality.

“DEUR” means declaration of environmental use restriction, as described in A.R.S. §§ 49-152 and 49-158. It is an institutional control and a restrictive covenant that runs with and burdens property and inures to the benefit of the Department and the state.

“Fee” means the fee authorized by A.R.S. §§ 49-152(H) and 49-158(E).

“Institutional control” has the meaning in A.R.S. § 49-151(2).

“One-time activities” includes reviewing and/or approving legal descriptions, control areas, contaminants, institutional controls, and draft DEURs, and providing notices of DEURs to local zoning jurisdictions.

“Ongoing activities” includes reviewing written reports, site inspections, or other verifications of maintenance of institutional controls.

“Underground storage tanks” means those underground storage tanks defined and regulated under A.R.S. Title 49, Chapter 6, Article 1, which have released a regulated substance that is petroleum, as defined in A.R.S. § 49-1001(12) and (14)(a).



**R18-7-602. Applicability**

The provisions of this Article apply only to properties where the owner uses an institutional control to reduce the potential for exposure to contaminants on the property. Property owners using an institutional control shall record, in each county where the property is located, a restrictive covenant labeled "declaration of environmental use restriction," that contains the information required by A.R.S. §§ 49-152(E) and (F), or 49-158(B) and (C), as approved by the Department. This information will be submitted on a form to be provided by the Department.

**R18-7-603. Fee**

Except as provided in R18-7-605, before recording the DEUR, property owners shall pay a fee to the Department as provided in R18-7-604 by company, cashier, or certified check, or money order.

**R18-7-604. Fee Calculation for Institutional Control Properties**

Property owners, using an institutional control, shall pay a fee to the Department that is the sum of the following:

1. \$1760 (16 hours x \$110), representing Department costs to perform one-time activities;
2. An amount representing the costs of ongoing activities performed by the Department that is one of the following:
  - a. For properties involving underground storage tanks: \$220 (2 hours x \$110) multiplied by the number of years the Department projects the property will require ongoing activities, not to exceed 30 years; or
  - b. For all other institutional control properties: \$440 (4 hours x \$110) multiplied by the number of years the Department projects the property will require ongoing activities, not to exceed 30 years;
3. \$1540 (14 hours x \$110), representing Department costs to review and render a decision on a request to release a DEUR pursuant to A.R.S. §§ 49-152(C) or 49-158(I);
4. \$1,500 per site, representing the property owner's pro-rata share to reimburse Department costs of administering the repository under A.R.S. § 49-152(D); plus
5. \$1,333 per site, representing the property owner's pro-rata share to reimburse Department costs of coordinating and overseeing its DEUR-related functions on behalf of all of its relevant programs.

**R18-7-605. Postponement of the Release Portion of the DEUR Fee**

Property owners may elect to postpone payment of the portion of the fee to release the DEUR, on the condition that payment of the reasonable and necessary costs of releasing the DEUR is made with the request to the Department to release the DEUR from the property. The condition shall be included in the recorded DEUR. Property owners electing to use this option acknowledge that the future amount of the release portion of the DEUR fee will be the amount established by this Article at the time the request for the release of the DEUR is filed with the Department, which may be greater than the current amount described in R18-7-604(C).